

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

IN RE: )  
 )  
EDWARD LANGEL and ) CASE NO. 04-63433 JPK  
JOYCE LANGEL, ) Chapter 7  
 )  
Debtors. )

ORDER FOR HEARING ON MOTION TO AVOID JUDICIAL LIEN

On July 10, 2005, the debtors, by counsel, filed their Motion to Avoid Judicial Lien with respect to a judgment lien held by Monogram Credit Card which has allegedly attached to the debtors' residence. The manner of service of this motion and of the Notice of Motion and Opportunity to Object – also filed on July 10, 2005 – was the subject of a hearing held by the Court on October 7, 2005. The record establishes that the motion and a Notice of Motion and Opportunity to Object was served upon CT Corporation System as resident agent, and upon a David R. Nissen as President of GE Consumer Finance, at an address in Stamford, Connecticut. It is not clear from this record whether or not these entities are successors in interest to Monogram Credit Card, as the entity which holds the judicial lien sought by the debtors to be avoided has been designated. It is presumed that counsel for the debtors has in fact determined that these entities are those upon whom service should be made for that creditor, and his explanation to that effect can be made at the hearing scheduled by this order.

The form of order tendered with respect to this motion raises questions as to the amounts of liens which are to be included in the computation provided by 11 U.S.C. § 522(f)(2). That order states that the fair market value of the subject real estate is \$135,000.00; that a first mortgage held by Citizens Financial Services, FSB has attached to the subject real estate, securing a debt of \$109,500.00; and that Bank One, Merrillville, NA holds a second mortgage securing a debt of \$19,750.00. Paragraph 8 of that order states that the debtors claim an exemption of \$15,000.00 with respect to the subject real estate. Unfortunately, none of these figures have any bearing on

the determination of the avoidability of the judicial lien.

The relevant time to determine both the value of the property with respect to which lien avoidance is sought, and the value of liens to be taken into account under § 522(f)(2) in order to determine whether or not a lien may be avoided, is the date of the petition; *In re Salanoa*, 263 B.R. 120 (Bankr. S.D.Cal. 2001); *In re Dore*, 124 B.R. 94 (Bankr. S.D.Cal. 1991). As to the value of the subject real estate on that date, the only potential evidence of record is the value stated in Schedule A, which is \$77,000.00. The exemption claimed by Schedule C is \$14,607.52. So far, so good. Now comes the difficult part. Schedule D lists two creditors having mortgage interests in the residential real estate: Bank One (at an address in Baton Rouge, Louisiana), stated to have a debt of \$41,671.55; and Horizon Bank (at an address in Michigan City, Indiana), stated to have a debt of \$20,720.93. However, this is an asset case, and thus a notice was sent to creditors to file claims. Horizon Bank (at the address stated in Schedule D) filed a proof of claim on July 23, 2004 in the amount of \$17,155.89. The statement attached to the proof of claim evidences the fact that the indebtedness was computed to the date of the filing of the petition. Apart from the claim of William Tobin, which does not attach in any manner to the subject real estate, there are no other secured claims in the claims register of this case.

Several problems emerge from the foregoing. First, the combined sum of the Bank One indebtedness stated in Schedule D, the proof of claim amount for Horizon Bank, and the debtors' claimed exemption is less than the fair market value of the real estate stated in Schedule A, thereby leaving the property subject to a portion of the judicial lien of Monogram Credit Card.<sup>1</sup> Another issue arises from the identification of the first mortgage holder in Schedule A as Bank One; the identification of the first mortgage holder in the proposed form of order as Citizens Financial

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<sup>1</sup> The Court notes that Schedule D did not take into account any lien for real property taxes, and to the extent of those taxes on the date of the filing of the petition which were subject to the statutory lien of Lake County for those taxes, that amount is able to be taken into account in the § 522(f)(2) computation – provided that the lien creditor is scheduled in the debtors' schedules.

Services, FSB; and the omission of Horizon Bank entirely from the proposed form of order.

For all of the foregoing reasons, it is necessary to conduct a hearing to sort out the matters addressed above.

IT IS ORDERED that a hearing will be held on **January 23, 2006, at 2:45 P.M.** with respect to the above-designated Motion to Avoid Judicial Lien.

Dated at Hammond, Indiana on December 22, 2005.

/s/ J. Philip Klingeberger  
J. Philip Klingeberger, Judge  
United States Bankruptcy Court

Distribution:  
Debtors, Attorney for Debtors  
Trustee, US Trustee